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TO RUEHC/SECSTATE WASHDC IMMEDIATE 5638
INFO RUCNCIS/CIS COLLECTIVE 1683
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RUEHBJ/AMEMBASSY BEIJING 1056
RUEHKO/AMEMBASSY TOKYO 1759
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RHEBAAA/DEPT OF ENERGY WASHDC
RUCPDOG/DEPT OF COMMERCE WASHDC
RUEATRS/DEPT OF TREASURY WASHDC
RUEAIIA/CIA WASHDC
RHEFAAA/DIA WASHDC
RHEHNSC/NSC WASHDC 1241
RUEKJCS/SECDEF WASHDC 1157
RUEKJCS/JOINT STAFF WASHDC
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SUBJECT: KAZAKHSTAN: 2009 INVESTMENT DISPUTES REPORT UPDATE

REF: STATE 49477

1. (U) Sensitive but unclassified. Not for public Internet.

2. (SBU) This cable constitutes post's response to reftel. The United States Government is aware of one (1) claim by United States persons against the Government of Kazakhstan (GOK).

3. (SBU) a. Claimant A

b. 1996

c. Although it has faced a number of regulatory issues, Claimant A has had two disputes that raise expropriation concerns.

Claimant A's dispute on electricity deliveries with the state-owned power transmission monopoly (now known as KEGOC) and the GOK began in 1996. Claimant A ultimately signed two memoranda of understanding (MOUs) with KEGOC and the GOK, outlining how the dispute would be resolved. Claimant A, however, considered KEGOC to be in breach of some of the contracts arising from the MOUs. KEGOC and the GOK submitted the case to international arbitration. Claimant A prevailed in a December 2007 ruling, and the Kazakhstani side paid it compensation, which appears to have resolved the matter.

Claimant A also asserts that discriminatory regulatory actions by regional authorities amount to expropriation. According to the Claimant, a regional government - with the support of some officials in the central government - has forced the Claimant to choose between lowering its rates (which would be politically expedient for the local authorities) or facing severe regulatory actions. Claimant A maintains that this is an example of improper tactics to extract financial benefits from the Claimant. Claimant A also complains of improper threats of criminal prosecution, which forced Claimant A's expatriate manager to depart Kazakhstan. In April 2008, an Almaty court ruled in favor of local regulatory authorities, levying a USD 148 million fine against Claimant A for alleged anti-trust violations in its electricity sales. On May 30, 2008, Claimant A publicly announced it had completed the sale of its ownership stake in a local power plant and coal mine to a Kazakhstani company, though it would continue to serve as manager

and operator of the two facilities. While the sale was reportedly very profitable for Claimant A, it appears to have been partly motivated by Claimant A's regulatory problems with Kazakhstani authorities.

On March 20, 2009, Claimant A announced that its contract for the management of the coal mine and power plant had been terminated in an early settlement it described as a "mutual decision that will benefit both (parties)." Claimant A reports that a state-owned Kazakhstani energy company continues to pursue Claimant A's profitable hydropower concessions. Also in 2009, Claimant A's expatriate manager was named in a civil lawsuit that seeks back taxes from a long-defunct proprietary trading company.

The USG is in regular contact with Claimant A and has on multiple occasions appealed to the Kazakhstani government in support of a just and fair resolution of the company's disputes with the authorities.

¶4. (SBU) Claimant A: AES Corp.

HOAGLAND